

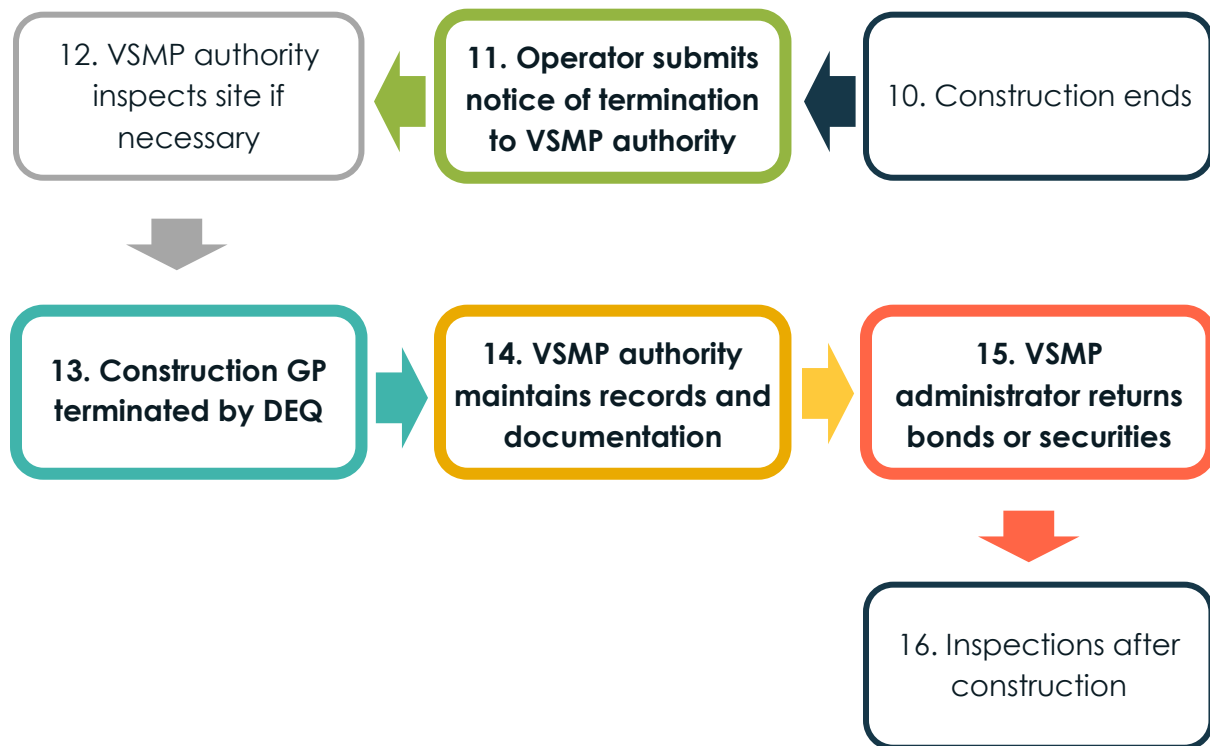
Module 9: Final Acceptance

9a. Overview.....	2
9b. Construction Record Drawings	4
9c. Notice of Termination	6
Long-term maintenance agreements.....	8
Information on permanent control measures	9
9d. Release of Security for Performance.....	10

Objectives

- Describe the regulatory requirements for final acceptance of projects, including post-construction BMPs.
- Explain the importance of construction record drawings for post-construction BMPs
- Review a notice of termination (NOT) to confirm that the necessary information is provided for post-construction BMPs

9a. Overview



As outlined in Module 2, the VSMP process includes certain post-construction activities that are required of the VSMP authority and the permittee:

Under Section 108 of the VSMP Regulations (9VAC25-870-108 E), the VSMP authority shall require submission of a “construction record drawing for permanent stormwater management facilities”. Note that “permanent stormwater management facilities” are also commonly referred to as “post-construction BMPs”, and can include both structural and non-structural facilities.

In some cases, construction record drawings may not be required by the VSMP authority, notably for stormwater management facilities that do not require recordation of an instrument for long-term maintenance (9VAC25-870-108 E). Recorded instruments need not be required by the VSMP authority for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated that maintenance of such facilities will be addressed through an enforceable mechanism (9VAC25-870-112 B).

The construction record drawings must be submitted before the Construction GP coverage can be terminated, with the Notice of Termination (NOT) for permit coverage submitted for the project after acceptance of the sealed construction record drawings.

Also, the VSMP authority should confirm that the BMPs maintenance plan and agreement has been properly recorded in legal documents. It is a good idea to review the documents again to confirm that they reflect the construction record drawings and have been properly recorded before recommending termination. If significant changes to the BMPs occurred during construction, as noted in the construction record drawings, then the maintenance plan and agreement may require revisions and subsequent recordation of the revised documents.

This module discusses final acceptance of a project through construction record drawings and the notice of termination for the Construction GP.

9b. Construction Record Drawings

Section 55 (9VAC25-870-55 D) of the VSMP Regulations requires the permittee to submit construction record drawings to the VSMP authority, and states that the construction record drawings must be “appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.” The sealed construction record drawings must be submitted before the Construction GP can be terminated. Once submitted, the VSMP authority must maintain construction record drawings in perpetuity, or until the stormwater management facilities are removed from operation.870-126

Neither the *Virginia Stormwater Management Act* (Act) nor the VSMP Regulations provide a definition or description of what constitutes a “construction record drawing”, although the VSMP Regulations make it clear that they must be sealed and signed by a professional, certifying construction in accordance with approved plans. The American Institute of Architects best practices document titled “Terminology: As-Built Drawings, Record Drawings, Measured Drawings” (June 2007) defines “Record drawings” as:

“Record drawings are prepared by the architect and reflect on-site changes the contractor noted in the as-built drawings. They are often compiled as a set of on-site changes made for the owner per the owner-architect contract.”

For post-construction stormwater management facilities, a “construction record drawing” ***might*** include documented revisions to the approved construction plans or approved amendments to the plans (“Red Line Drawings”); shop drawings; as-built survey drawings showing topography, elevations, and dimensions of storage and hydraulic control structures; special inspections; etc. The drawings may be sealed by an Architect, Landscape Architect, Land Surveyor, or Professional Engineer who is duly qualified and licensed in accordance with Virginia Code and Administrative Code. *The list above is not all inclusive and is not meant to constitute a legal definition of “construction record drawing” under the Act or VSMP Regulations.*

Construction record drawings are important for the VSMP authority and the party responsible for long-term maintenance to reference during maintenance inspections after the construction activity is complete and the Construction GP coverage terminated. The construction record drawings document the condition of the facility when it first began functioning post-construction. By comparison of the condition at inspection with the condition when operation

first began, it can be determined if the facility continues to operate as intended when designed and constructed.

At some point, maintenance could require maintenance dredging or the replacement of features that have completed their useful design life, and the construction record drawings are critical for determining the extent of dredging or the design of features that need to be replaced so the facility continues to function as intended. Construction record drawings could also prove useful if future development or redevelopment of a site seeks to use the existing BMP for stormwater management through expanding it or retrofitting it to enhance treatment volume and removal efficiency.

9c. Notice of Termination

The Construction GP Regulations (9VAC25-880-60) provides the conditions under which a completed construction activity can terminate coverage under the Construction GP, and provides a list of information required to be submitted to the VSMP authority under the DEQ Notice of Termination form (NOT). Permit coverage can be terminated by the applicant after one or more of the following conditions are met:

1. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. ***When applicable, long-term responsibility and maintenance requirements for permanent control measures must be recorded in the local land records before the submission of the Notice of Termination;***

#1 Authorization to discharge terminates either 60 days following submittal of NOT or upon notification from DEQ, whichever occurs first.

2. Another operator has assumed control over all areas of the site that have not been fully stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES or state permit has been obtained; or
4. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.

#2-4 Authorization to discharge terminates at midnight on date NOT submitted.

The NOT must be submitted within 30 days of one of the above conditions. Authorization to discharge terminates at midnight on the date that the NOT is submitted.

DEQ provides a NOT form (DEQ 199-147 or its replacement) for the permittee to use that includes the information required for termination, including the items in Table 10-1. The NOT is submitted to the VSMP authority, with final termination of coverage under the Construction GP processed by DEQ.

The DEQ Notice of Termination form can be downloaded from:

<http://www.deq.virginia.gov/Portals/0/DEQ/Water/Publications/CGPNoticeofTermination2014.pdf>

Table 10-1. Notice of Termination (9VAC25-880-60 B)

- ☐ Name, contact, mailing address, telephone number, and email address if available of the construction activity operator.
- ☐ Name and location if available of the construction activity covered under this general permit, including city or county, and latitude and longitude in decimal degrees.
- ☐ The general permit registration number.
- ☐ The basis for submission of the notice of termination.
- ☐ Where applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management technical criteria. For each permanent control measure that was installed, the following information shall be included:
 - The type of permanent control measure installed and the date that it became functional as a permanent control measure;
 - The location if available of the permanent control measure, including city or county, and latitude and longitude in decimal degrees;
 - The receiving water of the permanent control measures; and
 - The number of total and impervious acres treated by the permanent control measure (to the nearest one-tenth of an acre).
- ☐ 6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:
 - The type of regional facility to which the site contributes;
 - The location if available of the regional facility, including city or county, and latitude and longitude in decimal degrees; and
 - The number of total and impervious site acres treated by the regional facility (to the nearest one-tenth of an acre).
- ☐ Where applicable, the following information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:
 - The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and
 - The number of perpetual nutrient credits acquired (lbs. per acre per year).
- ☐ The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."
- ☐ The notice of termination shall be signed in accordance with 9VAC25-880-70 Part III K.

The information provided in the NOT on post-construction stormwater management, including participation in regional stormwater management plans and nutrient offsets, is important for the VSMP authority, U.S. EPA, DEQ, and MS4 authority to document compliance with federal, state, and local programs, including the Chesapeake Bay Program and the Chesapeake Bay TMDL.

Long-term maintenance agreements

(9VAC25-870-112, 9VAC25-880-60)

When the operator is filling out the DEQ Notice of Termination form, they have to confirm, when applicable, that the long-term maintenance agreement has been submitted.

Remember, the VSMP authority may choose not to require such recorded instruments for stormwater management facilities designed to treat stormwater runoff primarily from an **individual residential lot**, provided it is demonstrated to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority.

4. **Reason for Terminating Coverage under the General Permit:** (The operator shall submit a Notice of Termination after one or more of the following conditions have been met.)

- ☐ A. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a Notice of Termination;
- ☐ B. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
- ☐ C. Coverage under an alternative VPDES or state permit has been obtained; or
- ☐ D. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.

Excerpt from DEQ Notice of Termination form, page 1

Information on permanent control measures

(9VAC25-870-55)

When applicable, the operator must include a list of on-site and off-site permanent control measures on the DEQ Notice of Termination form.

5. **Permanent Control Measures Installed:** (When applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management technical criteria. Attach a separate list if additional space is needed.)



Permanent Control Measure #1

Type of Permanent Control Measure: _____

Date Functional: _____

Address (if available): _____

City: State: Zip: _____

County (if not located within a City): _____

Latitude (decimal degrees): _____ Longitude (decimal degrees) _____

Receiving Water: _____

Total Acres Treated: _____ Impervious Acres Treated: _____

Excerpt from DEQ Notice of Termination form, page 1

9d. Release of Security for Performance

The *Virginia Stormwater Management Act*, in §62.1-44.15:34 A of the Code of Virginia, allows a VSMP authority to require an applicant to submit “security for performance” to ensure that measures could be taken at the applicant's expense should he fail to initiate or maintain appropriate actions that may be required by the Construction GP. The “security for performance” can be in the form of a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority.

Section 104 of the VSMP Regulations (9VAC25-870-104) reinforces the VSMP authority’s option to require the submission of a reasonable performance bond or other financial surety for a regulated Land Disturbing Activity (LDA) and provide for the release of such sureties. However, should a VSMP authority choose to collect a reasonable performance bond, it must be documented in the Board approved VSMP program, including administrative policies and procedures to obtain and release bonds (9VAC25-870-148).

If the VSMP authority takes action on the security upon failure of the applicant to perform, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, the surety or any unexpended portion must be refunded to the applicant or terminated. Completion of the permit conditions is based upon submittal of construction record drawings and termination of Construction GP coverage.